Shahinuddin bin Shariff v Mohd Amin bin Hasbollah

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 22–359 OF 1997
ABDUL MALIK ISHAK J
23 MARCH 1998

Legal Profession *— Practice of law — Unauthorized person — Right to sue — Advocate and solicitor began action against co-partner through law firm which he was sole proprietor — No valid practising certificate — Whether plaintiff was an unauthorized person — Whether plaintiff suing in his personal capacity — Whether plaintiff and law firm in fact and law one of the same — Legal Profession Act 1976 ss 36 & 37*

The plaintiff and the defendant were advocates and solicitors and were partners and practised law under the name and style of Messrs Shahinuddin & Ranjit. The relationship turned sour and the plaintiff filed an action to sever the partnership. The court was then moved by way of a notice of motion dated 28 February 1998 for the committal of the defendant for disobeying court's order. On the date for hearing of the notice of motion, the defendant raised a preliminary objection in that the plaintiff did not have a valid practising certificate from 1 January 1998 to 23 February 1998 and therefore it was argued that the law firm of Messrs Shahinuddin & Ranjit did not exist at those material time and consequently all orders granted by the court were said to be null and void. Although it was conceded that the plaintiff in his personal capacity has the right to file the proceedings, it was argued that if the plaintiff as sole proprietor did not have a practising certificate, his law firm too cannot exist nor act. It was further argued that if the plaintiff had acted as he did, he would be acting as an unauthorized person under s 36(1) of the Legal Profession Act 1976 and committing an offence under s 37 of the same Act.

Held, dismissing the preliminary objection:

(1) There was no legal impediment for the plaintiff to sue in his capacity as an ordinary citizen and that was precisely what he was doing. As an advocate and solicitor, the plaintiff can certainly act for himself but the moment he acts for someone else, he must have a practising certificate. This is the test that one must apply. All affidavits were affirmed and deposed by the plaintiff in his personal capacity and not in his capacity as an advocate and solicitor (see p 699A–B).

(2) The plaintiff was entitled to sue the defendant in his personal name notwithstanding that he used the law firm of Messrs Shahinuddin & Ranjit as his solicitors. There were only two orders emanated from the court and on both dates the plaintiff had valid practising certificates. Even when the plaintiff had filed the affidavits in reply on 2 January 1998 and 9 January 1998 without a valid practising certificate, he filed those affidavits in his personal capacity and it did not make any difference whether he had a valid practising certificate or not. It also did not

make any difference that when the plaintiff filed the ex parte notice of motion, it was filed by the law firm of Messrs Shahinuddin & Ranjit because, firstly, the ex parte notice of motion was in the personal name of the plaintiff and secondly, the filing by the law firm of Messrs Shahinuddin & Ranjit was a convenient method of denoting the plaintiff as the sole proprietor of that law firm and for all intents and purposes it was the plaintiff that filed the ex parte notice of motion. For these reasons, it is not reprehensible nor does it contravene s 37 of the Legal Profession Act 1976 when the ex parte notice of motion was filed by the law firm of Messrs Shahinuddin & Ranjit (see pp 700I, 701A–D and 702G); *Keow Seng & Co v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered* [1983] 2 MLJ 103 followed.

(3) For all intents and purposes, the law firm of Messrs Shahinuddin & Ranjit refers to no one else but the plaintiff. It is the plaintiff and he is suing as a party, which was permissible by law, through his own law firm, which in law is himself (see p 702F).

(4) The lapse of the defendant's current practising certificate was an event which effected and put into play the automatic dissolution of the pre-existing partnership with the plaintiff. So long as the defendant remained disabled by not being in possession of a valid current practising certificate, the plaintiff should be regarded as carrying on the business of a newly constructed law firm of which he was and is the sole proprietor (see pp 702I and 703A); *Hudgell Yeates & Co v Watson* [1978] 2 WLR 661 followed.

[Bahasa Malaysia summary

Plaintif dan defendan adalah peguambela dan peguamcara dan merupakan rakan kongsi yang mengamalkan undang-undang di bawah nama Tetuan Shahinuddin & Ranjit. Terdapat perselisihan di antara mereka dan plaintif memfailkan tindakan untuk menamatkan perkongsian itu. Mahkamah kemudiannya diminta melalui notis usul bertarikh 28 Februari 1998 untuk perintah komital terhadap defendan kerana tidak mematuhi perintah mahkamah. Pada tarikh perbicaraan notis usul itu, defendan menimbulkan bantahan permulaan bahawa plaintif tidak mempunyai sijil amalan yang sah daripada 1 Januari 1998 hingga 23 Februari 1998 dan oleh itu dihujahkan bahawa firma undang-undang Shahinuddin & Ranjit tidak wujud pada masa material dan oleh sebab itu semua perintah yang diberikan oleh mahkamah dikatakan batal dan tak sah. Walaupun dipersetujui bahawa plaintif dalam keupayaannya sendiri mempunyai hak untuk memfailkan prosiding itu, adalah dihujahkan bahawa jika plaintif sebagai pemilik tunggal tidak mempunyai sijil amalan, firma undang-undangnya juga tidak boleh wujud atau bertindak. Selanjutnya dihujahkan bahawa jika plaintif bertindak seperti yang dilakukannya, dia akan bertindak sebagai seorang yang tidak mempunyai kebenaran di bawah s 36(1) Akta Profesyen Undang-Undang 1976 dan melakukan kesalahan di bawah s 37 Akta yang sama.

Diputuskan, menolak bantahan permulaan:

(1) Tidak ada sebarang penghalang dari segi undang-undang bagi plaintif untuk menyaman dalam keupayaannya sebagai seorang rakyat biasa dan itu adalah apa yang beliau lakukan. Sebagai seorang peguambela dan peguamcara, plaintif boleh bertindak untuk dirinya sendiri tetapi apabila dia bertindak untuk orang lain, dia mesti mempunyai sijil amalan yang sah. Ini adalah ujian yang mesti digunakan. Semua afidavit disahkan dan diikrarkan oleh plaintif dalam keupayaannya sendiri dan bukannya dalam keupayaannya sebagai peguambela dan peguamcara (lihat ms 699A–B).

(2) Plaintif berhak untuk menyaman defendan dalam namanya sendiri walaupun dia menggunakan firma undang-undang Shahinuddin & Ranjit sebagai peguamcaranya. Hanya terdapat dua perintah daripada mahkamah dan pada kedua-dua tarikh plaintif mempunyai sijil amalan yang sah. Walaupun plaintif telah memfailkan afidavit jawapan pada 2 Januari 1998 dan dan 9 Januari 1998 tanpa sijil amalan yang sah, dia memfailkan afidavit-afidavit itu dalam keupayaannya sendiri dan tidak ada bezanya sama ada dia ada sijil amalan yang sah atau tidak. Juga tidak ada bezanya apabila plaintif memfailkan notis usul ex parte, ia difailkan oleh firma undang-undang Shahinuddin & Ranjit kerana, pertama, notis usul ex parte itu adalah dalam nama plaintif sendiri dan kedua, pemfailan oleh firma undang-undang Shahinuddin & Ranjit adalah satu cara yang mudah untuk menandakan plaintif sebagai pemilik tunggal firma undang-undang itu dan untuk semua niat dan tujuan ia adalah plaintif yang memfailkan notis usul ex parte itu. Atas sebab-sebab ini, bukanlah satu kesalahan atau ketidakpatuhan kepada s 37 Akta Profesyen Undang-Undang 1976 apabila notis usul ex parte itu difailkan oleh firma undang-undang Shahinuddin & Ranjit (lihat ms 700I, 701A–D dan 702G); *Keow Seng & Co v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered* [1983] 2 MLJ 103 diikut.

(3) Untuk semua niat dan tujuan, firma undang-undang Shahinuddin & Ranjit merujuk kepada plaintif, dan bukannya orang lain. Adalah plaintif dan dia menyaman sebagai satu pihak, yang dibenarkan oleh undang-undang, melalui firma undang-undangnya sendiri, yang mana dalam undang-undang merupakan dirinya sendiri (lihat ms 702F).

(4) Luputnya sijil amalan defendan adalah satu perkara yang menyebabkan pembubaran automatik perkongsian dengan plaintif. Selagi defendan tidak berupaya kerana tidak mempunyai sijil amalan yang sah, plaintif patut dianggap sebagai menjalankan perniagaan firma undang-undang yang baru ditubuhkan di mana beliau adalah pemilik tunggal (lihat ms 702I dan 703A); *Hudgell Yeates & Co v Watson* [1978] 2 WLR 661 diikut.

Notes

For cases on practise of law, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1495–1526.

Cases referred to

Badan Peguam Malaysia v Normah bte Mat Yassin [1998] 1 AMR 100 (refd)
De Tastet v Shaw (1818) 1 B & Ald 664 (refd)
Hudgell Yeates & Co v Watson [1978] 2 WLR 661 (follld)
Keith Spicer Ltd v Mansell [1970] 1 All ER 462; [1970] 1 WLR 333 (refd)
Keow Seng & Co v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered [1983] 2 MLJ 103 (follld)
Richardson v Bank of England (1838) 4 My & Cr 165 (refd)
Tan Eng Choong v Foo Kai Yuen [1988] 1 MLJ 531 (refd)
Yip Shou Shan v Majlis Peguam [1994] 3 MLJ 82 (refd)

Legislation referred to

Legal Profession Act 1976 ss 32, 36(1), 37(1), (6)

M Puravalen (*Kumar Jaspal Quah & Aishah*) for the plaintiff.
S Sagadeva (*Saga, Raja & Kumar*) for the defendant.

Abdul Malik Ishak J:

Background facts

The plaintiff and the defendant were advocates and solicitors and they teamed up as partners and practised law under the name and style of Messrs Shahinuddin & Ranjit. The main office of that lucrative law firm is in Kuala Lumpur and its branch office is located in Johor Bahru. The plaintiff ran the Kuala Lumpur office while the defendant took care of the Johor Bahru branch. Not all partnerships survived the test of time. This was one partnership that went under the sea like the Titanic. The plaintiff filed his writ of summons together with the statement of claim on 18 December 1997 as reflected in encl 4. From the tenor of the statement of claim the plaintiff sued the defendant principally in regard to matters that arose out of the partnership that the plaintiff sought to sever. The principal complaints of the plaintiff against the defendant were, and may be summarized, as follows:

(1) that the defendant had suppressed information pertaining to a 'phantom' client's account maintained by the defendant and conveniently hid that fact from the knowledge of the unsuspecting plaintiff and the auditors;

(2) that the defendant had unwittingly caused the removal of files from the law firm of Messrs Shahinuddin & Ranjit;

(3) that the defendant had stooped so low as to falsify the accounts of the law firm of Messrs Shahinuddin & Ranjit by fraudulent means and clandestinely converted to his own use monies belonging to that law firm and its clients;

(4) that the defendant gave false and misleading information to the plaintiff and the auditors pertaining to the accounts of the law firm of Messrs Shahinuddin & Ranjit; and

(5) that the defendant had forged the plaintiff's signature when opening that mysterious 'phantom' client's account.

A clean accountant's report should have been prepared with the co-operation of the defendant who was in charge of the Johor Bahru branch. But the defendant refused to co-operate and this posed a threat to the livelihood of the plaintiff as the Bar Council was entitled to refuse a sijil annual and consequently will not recommend to the registrar for the issuance of a practising certificate to the plaintiff. On this point, Eusoff Chin SCJ (now Chief Justice of Malaysia) had this to say in *Yip Shou Shan v Majlis Peguam* [1994] 3 MLJ 82 especially at pp 87–88 of the judgment:

> We are of the view that s 32 of the Act imposes a duty on the Bar Council to process and scrutinize every application for a sijil annual. It is the Bar Council's paramount duty to ensure that only an honest, trustworthy, fit and proper advocate and solicitor should be allowed to practise. Any act of dishonesty on the part of an advocate and solicitor would bring the Bar Council and the legal profession into disrepute. The issuance of a sijil annual by the Bar Council is its recommendation to the registrar that such advocate and solicitor is a fit person to be issued a practising certificate under s 29 of the Act. If the Bar Council finds that an advocate and solicitor has failed to keep proper accounts of all moneys received by his firm and therefore he cannot deliver a clean accountant's report, the Bar Council is entitled to refuse to issue a sijil annual and consequently will not recommend to the registrar for the issuance of a practising certificate to the advocate and solicitor concerned.

On 18 December 1997, the plaintiff filed an ex parte summons in chambers as reflected in encl 5 to, inter alia, freeze the defendant's accounts and assets, and to seek the return of the assets of the law firm of Messrs Shahinuddin & Ranjit. Enclosure 5 was supported by an affidavit of the plaintiff that was affirmed on 18 December 1997 and filed on the same date as seen in encl 3. The affidavit in encl 3 was quite lengthy and it focussed on the assets of that law firm. I heard the summons in chambers in encl 5 on 18 December 1997 since it was supported by a certificate of urgency as seen in encl 2 and on that very day I granted the prayers sought for in encl 5. An order to that effect was extracted and filed on 19 December 1997 as reflected in encl 6 and was duly served on the defendant. The defendant wasted no time and challenged the order issued by this court in encl 6 by filing a summons in chambers in encl 11 on 19 December 1997 to set aside encl 6. Enclosure 11 was supported by an affidavit deposed by the defendant which was affirmed on 27 December 1997 as seen in encl 10

and filed on the same date. The hearing of encl 11 was postponed on at least three separate occasions to enable the defendant to file further affidavits. The plaintiff did not remain idle and he filed an affidavit in reply in encl 22 on 9 January 1998 in response to encl 10.

Committal proceedings instituted by plaintiff

Events moved very fast like the speed of lightning. The defendant disobeyed the order of this court that was handed down on 18 December 1997 and the plaintiff then applied by way of an ex parte for leave to commit the defendant as seen in encls 18, 18A and 18B. Leave was duly granted by this court on 27 February 1998 (encl 22) and this court was then moved by way of a notice of motion that was filed on 28 February 1998 for committal of the defendant (encl 25).

Enclosures 11 and 25

These two enclosures were promptly fixed for hearing on 12 March 1998 but on that day Mr S Sagadeva, the learned counsel for the defendant, surprisingly raised a preliminary objection which was hatched at 3.30am — the wee hour of the morning of 12 March 1998 and which according to him would affect everyone. Mr M Puravalen, the learned counsel for the plaintiff, was also taken by surprise by this legal manoeuvring. To Mr S Sagadeva 'the law is not the same at morning and at night' (per George Herbert in *Jacula Prudentum*). Roscoe Pound in his book entitled *Introduction to the Philosophy of Law* aptly said that 'the law must be stable, but it must not stand still'. I take it that Mr S Sagadeva was endeavouring to develop the law by advancing his preliminary objection. 'Laws are like spiders' webs: If some poor weak creature come up against them, it is caught; but a big one can break through and get away': Solon, quoted in *Diogenes Laertius, Lives of the Eminent Philosophers*. Let us see whether the preliminary objection will break free the defendant and let him get away.

It was submitted by Mr S Sagadeva by way of a preliminary objection that the plaintiff did not have a valid practising certificate from 1 January 1998 to 23 February 1998. Flowing from that it was argued that the law firm of Messrs Shahinuddin & Ranjit did not exist at those material times and, consequently, all orders granted by this court as adverted to in the early part of this judgment were said to be null and void. An argument was fashioned that under the Legal Profession Act 1976 anyone without a practising certificate is deemed to be an unauthorized person and that there is a penal provision for its contravention. The law firm of Messrs Shahinuddin & Ranjit was said to be non-existent on those material dates and that all legal actions undertaken by that law firm on those material dates were said to be unauthorized.

The pertinent question to ask would be this: What is the legal consequence if the plaintiff himself does not have a practising certificate? First and foremost the plaintiff is a citizen of this country and in that

capacity he is a litigant in this case. There is no legal impediment for the plaintiff to sue in his capacity as an ordinary citizen and that is precisely what he is doing. As an advocate and solicitor the plaintiff can certainly act for himself but the moment he acts for someone else he must have a practising certificate. This is the test that one must apply. It is interesting to note that all the affidavits in enclos 3, 22 and 18B were all affirmed and deposed by the plaintiff in his personal capacity and not in his capacity as an advocate and solicitor. The question of the plaintiff not having a practising certificate and affirming those affidavits in encls 3, 22 and 18B should not bother the defendant's counsel or the defendant himself. As an individual and a citizen of this wonderful country the plaintiff is entitled in law to affirm those affidavits. An advocate and solicitor is said to be an unauthorized person if his name is not in the Roll and he has no valid practising certificate authorizing him to do the act. This is clearly borne out by s 36(1) of the Legal Profession Act 1976 which enacts that:

> Subject to this section, no person shall practise as an advocate and solicitor or do any act as an advocate and solicitor unless his name is on the Roll and he has a valid practising certificate authorizing him to do the act; a person who is not so qualified is in this Act referred to as an 'unauthorized person'.

Thus, if one has a practising certificate one is said to be an authorized person and one's name is on the Roll.

The scheme of the Legal Profession Act 1976 was lucidly explained by Abdul Kadir Sulaiman J in *Badan Peguam Malaysia v Normah bte Mat Yassin* [1998] 1 AMR 100 in these words (see p 106 of the judgment):

> By the scheme of the Act, the Bar Council is required by s 85 to maintain a register of firm names under which advocates and solicitors practise. In each year, an advocate and solicitor who does any act in the capacity of an advocate and solicitor is required by s 29(1)(a) to deliver or cause to be delivered to the Registrar, a written declaration stating his full name, the name under which he practises, or the name of the advocates and solicitors or firm of advocates and solicitors employing him, and the principal and any other address or addresses at which he practises in Malaysia as one of the pre-conditions for the issue to him by the Registrar with a certificate to practice. By s 31(1), upon the issue of the practising certificate to him, the Registrar shall cause to be entered in an annual register, the particulars contained in the written declaration delivered by the advocate and solicitor under s 29(1)(a). The register kept by the Registrar for this purpose is called the annual register because the life of a practising certificate issued to an advocate and solicitor is only to last for a year, because in the following year, if the same advocate and solicitor wants to continue practising, he is required to repeat the process provided by s 29 to enable the Registrar to issue to him with that year's practising certificate. The register kept by the Registrar being of that nature, annual in nature, must necessarily contain an up to date information pertaining to the particular advocate and solicitor for the year in question in respect of whom a practising certificate has been issued. It follows, therefore, that should there be any change with respect to such advocate and solicitor in the particulars delivered under s 29(1)(a) for that year in question wherein he was issued with the practising certificate, the Registrar needs to be notified, one for the purpose of updating the

> annual register, and the other for purpose of seeing that under the changed circumstances, whether the practising certificate issued for the year is still valid or that it should be withdrawn. It is for that reason that s 31(2) of the Act requires the notification by the advocate and solicitor to the Registrar.

At p 107 of the judgment, his Lordship Abdul Kadir Sulaiman J continued:

> As stated earlier, the life of a practising certificate issued to an advocate and solicitor is only for a year which by s 29(4) means the period from 1 January, in any calendar year to the day of 31 December, in the same calendar year. One of the conditions for the issue of the practising certificate by Registrar as required by s 29 is the last Sijil Annual or a true copy thereof, be issued to the advocate and solicitor by the Bar Council. The procedure for the issuing of a Sijil Annual by the the Bar Council is prescribed in s 32 of the Act. So, if no Sijil Annual is so issued by the Bar Council for any particular year, an advocate and solicitor cannot practice for that particular year because without a Sijil Annual, no practising certificate will be issued to him by the Registrar. If he does so, he becomes an unauthorized person and shall be guilty of an offence under s 37 of the Act.

Mr S Sagadeva submitted that he has no quarrel that the plaintiff in his personal capacity has the right to file the proceedings. He submitted that the proceedings revolved on the issue of a partnership of a law firm known as Messrs Shahinuddin & Ranjit and that all the documents were filed by that law firm who were described as the solicitors for the plaintiff on record. Mr Puravalen described the plaintiff, from the bar, as the owner of the law firm of Messrs Shahinuddin & Ranjit and that makes the plaintiff, in law, as the sole proprietor. Flowing from this, it was argued by Mr S Sagadeva that if the plaintiff as the sole proprietor do not have a practising certificate his law firm too cannot exist nor act. If the plaintiff acted as he did, he would be acting as an unauthorized person under s 36(1) of the Legal Profession Act 1976 and he would then run foul and be guilty of an offence under s 37 of the Legal Profession Act 1976 — so it was submitted by Mr S Sagadeva. Mr M Puravalen argued that the defendant has the audacity to come to court and argued that the plaintiff too was infected by s 37(7) of the Legal profession Act 1967 notwithstanding the fact that the plaintiff had a valid practising certificate on those material dates. It was Mr M Puravalen's argument that Mr S Sagadeva was trying to scuttle, like Saddam's scud missile, the committal proceedings and adding insult to injury by asking this court to use s 37(7) of the Legal Profession Act 1976 to cite the plaintiff for contempt. This was the extent the defendant was willing to proceed, so ran the submission of Mr M Puravalen. I was told from the bar that the plaintiff found it difficult to secure a practising certificate because of the sole conduct of the defendant.

In my judgment, the plaintiff here is entitled to sue the defendant in his personal name notwithstanding that he used the law firm of Messrs Shahinuddin & Ranjit as his solicitors. All the affidavits as pointed out earlier were affirmed by the plaintiff personally. To recapitulate the complaint was that the plaintiff was without a practising certificate from 1 January 1998 to 23 February 1998 and flowing from that the further complaint was that all orders emanating from this court on those dates

would be null and void and of no effect. There were only two orders that emanated from this court. One was dated 18 December 1957 (encl 6) and the other was dated 27 February 1998 (encl 22). On both these two dates the plaintiff had valid practising certificates. Even when the plaintiff filed the writ of summons together with the statement of claim on 18 December 1997 in encl 4 he had with him a valid practising certificate. When the affidavit in encl 3 was affirmed and filed, it was on 18 December 1997 and on that date too the plaintiff had a valid practising certificate. But when the affidavit in reply in encl 22 was filed on 9 January 1998 and the affidavit in encl 18B was filed on 2 January 1998, the plaintiff was without a valid practising certificate and in my judgment he filed those affidavits in his personal capacity and it did not make a whit of a difference whether he had a valid practising certificate or not. In my judgment, it also makes not a whit of a difference that when the plaintiff filed the ex parte notice of motion in encl 10, it was filed by the law firm of Messrs Shahinuddin & Ranjit because, firstly, the ex parte notice of motion was in the personal name of the plaintiff and, secondly, the filing by the law firm of Messrs Shahinuddin & Ranjit was a 'convenient method of denoting' the plaintiff as the sole proprietor of that law firm and for all intents and purposes it was the plaintiff that filed the ex parte notice of motion. By way of an analogy and to fortify my stand, reference to the case of *Keow Seng & Co v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered* [1983] 2 MLJ 103 (FC) should be made where at p 105, Raja Azlan Shah LP (as His Majesty then was) said:

> ... The Rules of the High Court 1980 (O 77) provide for the commencement of legal proceedings by and against partnership firms in the firm name which is merely a convenient method of encapsulating the individual partners who constitute the partnership firm. The firm name is not in itself the name of any person other than the partners because in the words of Farewell LJ in *Sadler v Whiteman* [1910] 1 KB 868 at p 889:
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> > 'The fallacy is to say that a partner in a firm does not, but the firm does, carry on business. In English law a firm as such has no existence; partners carry on business both as principals and as agents for each other within the scope of the partnership business; the firm name is a mere expression; the firm name is a mere expression, not a legal entity, although for convenience under Order XLVIII. A it may be for the sake of suing and being sued.

Further down the same page of the same judgment, His Majesty had this to say:

> A plaintiff who sues such partners in their firm name sues them individually just as much as if he had set out all their names. Lindley LJ said of this in *Western National Bank of City of New York v Perez Triana & Co* [1891] 1 QB 304 at p 314:
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> > 'When a firm's name is used, it is only a convenient method for denoting those persons who compose the firm at the time when that name is used, and a plaintiff who sues partners in the name of their firm in truth sues them individually, just as much as if he had set out all their names.'

A fortiori when a plaintiff serves a notice to quit on the individual partners in their firm name, he serves them individually just as much as if he had set out all their names. We find further support of this view in the following passage from the speech of Lord Diplock in the recent Privy Council case of *Eng Chuan & Co & Ors v Four Seas Communications Bank Ltd* [1982] 2 MLJ 81 at p 82:

> 'The notice to quit dated 29 January 1976, addressed by solicitors on behalf of the bank to 'Eng Chuan & Co' acknowledge the existence of a tenancy in the person or persons to whom what description properly applies, since it requires them to 'quit and deliver up' possession of the premises "on 29 February 1976 (or at the expiration of the month of your tenancy which will expire next after the end of one calendar month from the time of the service of this Notice)". The only persons to whom that description properly applied, and had done so ever since 31 December 1953, were the three personal appellants whose names had appeared in the Register of Business Names as constituting the firm of Eng Chuan and Co from 31 December 1953 until it ceased trading in 1971. In their Lordships' view, if the bank sought to rely upon the monthly tenancy being vested in someone other than the personal appellants as tenant under that description, the onus lay upon the bank to prove it.'

The principle of law that can be distilled from *Keow Seng & Co v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered* may be stated as follows: that when a plaintiff serves a notice to quit on the individual partners in their firm's name, he serves them individually just as much as if he had set out all their names.

In my judgment, for all intents and purposes, the law firm of Messrs Shahinuddin & Ranjit refers to no one else but the plaintiff. It is the plaintiff and he is suing as a party, which is permissible by law, through his own law firm, which in law is himself. *Keow Seng & Co v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered* supports the proposition that the law firm's name of Messrs Shahinuddin & Ranjit is nothing but a mere expression. Neither is it a legal entity or a legal persona. It is but a convenient way of denoting the person or persons who comprise the law firm and in this case, as we know, it is the plaintiff — the sole proprietor. For these reasons, it is not reprehensible nor does it contravene s 37 of the Legal Profession Act 1976 when the ex parte notice of motion in encl 10 was filed by the law firm of Messrs Shahinuddin & Ranjit.

Now, when the plaintiff filed his writ of summons together with the statement of claim on 18 December 1997 (encl 4), the defendant was without a practising certificate. On the authority of *Hudgell Yeates & Co v Watson* [1978] 2 WLR 661 it is obvious that when any partner does not hold a current practising certificate, the effect is that the partnership becomes illegal and is dissolved. Thus, on 18 December 1997 the partnership between the plaintiff and defendant was dissolved. In my judgment, the lapse of the defendant's current practising certificate was an event which effected and put into play the automatic dissolution of the pre-existing partnership with the plaintiff. So long as the defendant remained disabled by not being in possession of a valid current practising certificate,

A the plaintiff should be regarded as carrying on the business of a newly constructed law firm of which he was and is the sole proprietor. This is an ingenious method that put fair play and commonsense to the forefront and it would not penalize the innocent plaintiff for suing the defendant in his (plaintiff's) personal capacity. Section 37(1) of the Legal Profession Act
B 1976 enacts that:

> Any unauthorized person who —
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> (a) acts as an advocate and solicitor or an agent for any party to proceedings or in any capacity, other than as a party to an action in which he is himself a party, sues out any writ, summons or process, or commences,
C carries on, solicits or defends any action, suit or other proceedings in the name of any other person in any of the Courts in Malaysia or draws or prepares any instrument relating to any proceedings in any such Courts; or
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> (b) wilfully or falsely pretends to be, or takes or uses any name, title,
D addition or description implying that he is duly qualified or authorized to act as an advocate and solicitor, or that he is recognized by law as so qualified or authorized,
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> shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand five hundred ringgit or to imprisonment for a term not exceeding six months or both

E and it is clear from the writ of summons and the statement of claim that the plaintiff is himself a party to the proceedings and is suing in such a capacity.

Section 37(6) of the Legal Profession Act 1976 further enacts that:

F > Where any firm does an act which if done by a person would be an offence under subsection (1), (2) or (3) every member of the firm shall be deemed to have committed the offence unless he proves that he was unaware of its commission

and when seen in its proper context the act of the plaintiff in affirming
G those affidavits (encls 3, 22 and 18B) and filing the present proceedings cannot be construed to be an offence as the plaintiff himself is a party and is excepted by s 37(1)(a) of the Legal Profession Act 1976. In my judgment, since it is not an offence under s 37(1)(a) of the Legal Profession Act 1976 for what the plaintiff did, it follows therefore that under s 37(6) of the Legal Profession Act 1976 it too cannot be an offence if the law firm of
H Messrs Shahinuddin & Ranjit filed the present proceedings for the plaintiff.

It is of particular significance to note the observations of Waller LJ in *Hudgell Yeates & Co v Watson* at pp 673–674 of the judgment, where his Lordship succinctly said:

I > If solicitors enter into partnerships they do so in order to share the profits and bear the financial adversities in common; also to share the abilities and expertise of the partners. But the partnership remains a group of individuals, each with a practising certificate, and it does not and cannot have a practising certificate for the partnership as a whole.

These words ring true and when applied to the factual matrix of the present case it can be said that the law firm of Messrs Shahinuddin & Ranjit too do not possess a practising certificate. It is the individual partner, like the plaintiff or the defendant, that possesses the practising certificate. By way of a simple deduction when encl 10 was filed by the law firm of Messrs Shahinuddin & Ranjit, it was not that law firm that filed the said enclosure but rather it was the plaintiff, the sole proprietor, who filed the said enclosure.

A partnership is a contractual relationship which subsists between persons carrying on business in common with a view to making a profit. This must be the intention of both the parties here until that relationship turned sour. A partnership of a law practice can be seen in the case of *Tan Eng Choong v Foo Kai Yuen* [1988] 1 MLJ 531 where Foo Kai Yuen invited the plaintiff to join him as a partner in his law practice. The plaintiff agreed and they practised together for about a year under the name and style of KY Foo & Co. The plaintiff then resigned and left the practice and he sought an account from Foo Kai Yuen in respect of the firm. Foo Kai Yuen alleged that the plaintiff had never been a partner. The senior assistant registrar gave a summary order for accounts to be rendered and Foo Kai Yuen lodged an appeal. The High Court granted the appeal for the simple reason that the parties disputed the status of the arrangement between them, the position was said to be unclear and the summary judgment was therefore inappropriate. In the present case, the existence of the partnership can never be doubted. It is said that to determine whether or not there is a partnership in existence, one must look at both the law and the fact. To put it differently, it is purely a question of mixed law and fact (*Keith Spicer Ltd v Mansell* [1970] 1 All ER 462 at p 463; [1970] 1 WLR 333 at p 335 (CA) per Harman LJ), *Richardson v Bank of England* (1838) 4 My & Cr 165 at pp 171, 172 and *De Tastet v Shaw* (1818) 1 B & Ald 664 in clear terms clarify the relationship between partners. These two cases laid down the principle that the relationship between partners cannot be construed as debtor and creditor unless the partnership has dissolved and the partnership accounts have been taken and the balance has been ascertained to be owing from one to another. For the moment, these principles are to be kept within sight until the merits of the case are explored to the fullest. It is now apparent that the preliminary objection cannot break free and let the defendant get away. The law is the law and no one is above it.

For these reasons, I dismissed the preliminary objection and made no order as to costs.

Reported by Ng Kian Pin